

COMMONWEALTH OF KENTUCKY
WARREN CIRCUIT COURT
DIVISION NO. II
CIVIL ACTION NO. 19-CI-1515

ENTERED
OCT 31 2019
BRANDI DUVALL, CLERK
WARREN CIRCUIT/DISTRICT COURT

COMMONWEALTH OF KENTUCKY *EX REL.*
ANDY BESHEAR, ATTORNEY GENERAL

PLAINTIFF

V.

CONSENT JUDGMENT

VICKERY ENTERPRISES, INC.,
VICKERY-YOUNG & ASSOCIATES, LLC,
JAMIE VICKERY, AMBER VICKERY,
STEPHANIE YOUNG, and THOMAS YOUNG

DEFENDANTS

This Consent Judgment is entered into by and between the Plaintiff, Commonwealth of Kentucky *ex rel.* Andy Beshear, Attorney General (herein "Attorney General"). and Vickery Enterprises, Inc. ("Vickery Enterprises"), Vickery-Young & Associates, LLC ("Vickery-Young"), Jamie William Vickery ("J.W. Vickery"), Amber Vickery, Stephanie Renee Young ("Stephanie Young"), and Thomas Christopher Young ("Thomas Young"), (hereinafter "Defendants"), and is intended as a compromise between these parties of the claims brought by the Attorney General against Defendants in this litigation styled *Commonwealth of Kentucky ex rel. Beshear v. Vickery Enterprises, Inc., et al.*

1. Plaintiff brings this civil law enforcement action under the Kentucky Consumer Protection Act ("KCPA"), KRS 367.110 *et seq.*, the federal Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the Telephone Consumer Protection Act, 47 U.S.C. § 227(g) ("TCPA"), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten gains, and other equitable and statutory relief for Defendants' acts or practices in violation of the KCPA, the TSR,

and the TCPA. The Defendants deny the allegations contained in the Attorney General's Complaint, including but not limited to the allegations that it violated provisions of KRS Chapter 367.110 *et seq.*, the TSR, and the TCPA, and enter into this Consent Judgment in order to avoid the time and expense associated with litigation. The parties agree that this Consent Judgment shall not be construed as, or be evidence of, admissions by Defendants, nor shall it be construed as a finding by the Court of any violation of any law.

PARTIES, JURISDICTION, AND VENUE

2. The Parties are the Plaintiff and Defendants in this case.
3. This Court has subject matter jurisdiction regarding the KCPA claims pursuant to KRS 367.190 and the TCPA claims pursuant to 47 U.S.C. sec. 227(g)(2).
4. Venue is proper in this Circuit pursuant to KRS 367.190.

ALLEGATIONS

5. This Consent Judgment is the result of a multistate investigation undertaken by Kentucky, Tennessee, and Texas. A Complaint and Consent Judgment will be filed in each state.

6. The Kentucky Attorney General has filed a Complaint for an injunction and other relief in this matter alleging the Defendants violated the Kentucky Consumer Protection Act ("KCPA"), KRS 367.110 *et seq.*, KRS 367.46955(3), (15) and (19), the federal Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the federal Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227 *et seq.* by:

- a. Since at least 2014 and continuing thereafter, J.W. Vickery, initially by and through the assistance of Vickery Enterprises and Amber Vickery and later as Vickery-Young with the assistance of Amber Vickery and Thomas and Stephanie Young, has engaged in a deceptive telemarketing program by which they and the companies' telemarketers make unsolicited outbound telephone calls to consumers throughout the

United States to induce them to purchase its recovery services. Defendants allege they can help consumers recover money previously lost to fraudulent or bad investments. Many of the consumers contacted by Defendants have previously suffered monetary losses ranging from tens of thousands to hundreds of thousands of dollars, primarily in oil and gas investments.

b. Telemarketing calls were made to individuals who were on the Do Not Call Registry maintained by the United States Federal Trade Commission.

c. During telemarketing calls, Defendants' representatives tell consumers they specialize in recovering investments lost to securities and criminal fraud, promising a high success rate in the recovery of money and the criminal prosecution of investment fraudsters.

d. Defendants also tell consumers that they work closely with government agencies to help facilitate the criminal prosecution of the individuals behind such investment frauds. They provide promotional materials to consumers that further highlight their alleged success, making false or misleading claims, such as:

- i. "work with investors on a one on one basis to help them recover money that was fraudulently taken from them,"
- ii. "only way to successfully recover money from these con artists is to be aggressive,"
- iii. "highly aggressive recovery techniques,"
- iv. "we pursue criminally,"
- v. "prison carries much more leverage than threatening a company with a lawsuit,"
- vi. "specialize in representing a small group of investors,"
- vii. "we want to keep our numbers small to increase our clients' chance at recovering money,"
- viii. "can recovery your money in 30-60 days!"
- ix. "100% money back guarantee."

e. In making such claims, Defendants misrepresent the nature of their

relationships with government enforcement agencies, leading consumers to believe that their recovery services play an influential role in the prosecution of individuals identified as having committed violations of securities or other laws, when they do not.

f. Defendants tell consumers that, for a non-refundable upfront “research fee,” they will compile a Research Report specific to each consumer’s investment, including background of the principals of the investment company, a summary of applicable laws and regulations, and an analysis of whether violations of law occurred. They tell consumers that the research report will be sent to government authorities to aid in a civil enforcement action or criminal prosecution of investment fraudsters. The upfront “research fee” may range from about \$1,500 to several thousand dollars, depending on the number of companies being “researched” and size of each investment.

g. In reality, the research report that Defendants produce contains little-to-no individualized information and mainly consists of highly generic, boilerplate descriptions of securities laws and potential violations of law. Despite Defendants’ representations concerning the usefulness or importance of the research report, it is generally not relied upon by government agencies related to any civil enforcement action or criminal prosecution. Moreover, in many cases, the company about whom the report is provided has already been prosecuted, and judgment has been entered.

h. The nonrefundable upfront “research fee” for the completion of a research report is, in actuality, a disguise for an upfront fee for recovery services, an activity that is regulated by the Federal Trade Commission’s Telemarketing Sales Rule and the Kentucky Consumer Protection Act as set forth in more detail below. Defendants tell consumers that

they are paying for an initial product, when in fact they are paying for the commencement of supposed recovery services promised by the Defendants.

i. In addition to coming within the bounds of the Telemarketing Sales rule, the Defendants' request or acceptance of payments from consumers is regulated by Kentucky telephone solicitation statutes, KRS 367.46951 *et seq.*, which require disclosures and specific contractual elements.

j. Upon receipt of the upfront fee, Defendants tell consumers that they will begin the recovery services to collect consumers' lost money, including compiling the research report, sending the research report on behalf of consumers to government enforcement agencies, and maintaining contact with government agencies on the status of consumer cases.

k. Defendants also tell consumers that they charge a separate back-end fee, generally 15% to 20%, of the amount of any funds recovered. In some instances, the negotiated back-end fee may be higher or lower, depending on the amount paid upfront by the consumer and the size of the consumer's investment(s).

l. Defendants tell consumers that, if they purchase their recovery services, the consumers will recover or are highly likely to recover all or a portion of the monies previously lost through investments. Consumers, in turn, believe they stand a greater chance of recovering money by hiring the Defendants versus not hiring them.

m. Although Defendants do not commit to specific time frames for the recovery of monies in their advertising and marketing materials, Defendants give consumers the false impression that they are likely to receive their funds within a relatively short time period. Defendants give this impression by claiming to have had prior success in obtaining

quick recoveries; however, such instances are rare or non-existent and are not representative of the success in typical cases. Vickery Enterprises and Vickery-Young, for example, both claimed it could recover money in 30-60 days if the investment company chooses to settle; however, there is no indication that such results were representative of results likely to be obtained.

n. Defendants' representations in their paperwork to consumers concerning the probability of recovering funds often differ from what they tell consumers on the phone. Defendants regularly represent that their success rate is 70% when in fact their rate of success is very low.

o. Despite Defendants' misleading statements to consumers about their probability of recovering money, the chances of any monetary recovery for consumers is very low. In some instances, Defendants file complaints with government agencies after the statute of limitations has run on potential claims, meaning consumers have no chance of recovering any money in the form of restitution or other relief upon the resolution of an action.

p. Defendants, however, have already collected, in aggregate, hundreds of thousands of dollars in upfront recovery service fees from consumers, which they have attempted to disguise as fees associated with the compilation of a research report.

q. Some consumers agree to purchase the recovery services in reliance on Defendants' false or misleading statements. Defendants send consumers a packet of documents for consumers to complete including background on the company in which they invested, an affidavit concerning the consumer's specific investment information, and

promotional materials. Defendants instruct consumers to sign and return these documents, along with their upfront payment.

r. Defendants frequently make repeated calls to pressure consumers who are undecided on whether to purchase recovery services. In pitching their services, Defendants often create a false sense of urgency, telling consumers they must render payment and enroll in the recovery services soon so Defendants can add their cases in with other consumer complaints they are in the process of sending to government enforcement authorities.

s. Consumers who call Defendants to inquire about the status of their recoveries are frequently told that their cases have been sent to the proper governmental authorities. In some instances, Defendants blame the lack of updates on government agencies, telling consumers their complaints go into a “government black hole” or, in extreme cases, a particular government agency is colluding with investment fraudsters and therefore not prosecuting cases.

t. In most instances, consumers who paid upfront fees to Defendants for recovery services have not recovered any portion of the funds they lost in previous investments. As a result, consumers have been harmed in the form of further monetary losses to Defendants’ deceptive telemarketing scheme.

7. The allegations in paragraph 6 are “Covered Conduct” within the meaning of this Consent Judgment.

8. The Attorney General alleges that the above-referenced alleged actions by Defendants violated the Consumer Protection Act. However, the Defendants deny the allegations contained in the Attorney General’s Complaint, including but not limited to the allegations that it

violated provisions of KRS Chapter 367.110 *et seq.* the TSR and the TCPA and enter into this Consent Judgment in order to avoid the time, risk and expense associated with litigation. The parties agree that this Consent Judgment shall not be construed as, or be evidence of, admissions by Defendants, nor shall it be construed as a finding by the Court of any violation of provisions of any law.

ASSURANCES AND AGREEMENTS

9. This Consent Judgment is a settlement of a disputed matter. Defendants are entering into this Consent Judgment solely for the purpose of settlement.

10. This Consent Judgment applies to all of Defendants' locations within or serving residents of the Commonwealth of Kentucky.

11. The individuals signing this Consent Judgment on behalf of Defendants state that they are under no disability, have read and knowingly consent and agree to this Consent Judgment, and have authority to sign and enter into this Consent Judgment.

12. This Consent Judgment applies to Defendants and to its principals, officers, agents and directors, assigns and successors, and managerial or supervisory employees. Defendants agree to notify its agents, employees, representatives, successors, and assigns of the execution of this Consent Judgment and inform them regarding the requirements thereof.

PERMANENT INJUNCTION

13. Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, device, affiliate, or other entity, and its officers, employees, agents, successors, and assigns and all persons in active concert or participation, agree to be permanently enjoined from engaging in the following acts or practices:

a. offering, soliciting, providing, assisting in or engaging in any Recovery Services in any capacity for five (5) years from the Effective Date of this Judgment. For the purposes of this Judgment, "Recovery Services" means any goods or services sold, leased, provided, offered, or promised to a consumer that are both:

- i. for the purpose of assisting the consumer with recovering money, obtaining a refund, researching facts or law, or obtaining a promised benefit; and
- ii. related to any individual or business the consumer previously invested in or paid money to, including but not limited to a consumer's prior (a) investments, (b) stock purchases, (c) purchase or lease of oil or gas interests, or (d) payment(s) related to rights in oil or gas drilling ventures or securities;

b. soliciting, requesting, or accepting upfront or advance fees for Recovery Services in any capacity in perpetuity;

c. advertising, soliciting, contracting, or conducting business as Vickery-Young & Associates, Vickery-Young & Associates LLC, Vickery Enterprises, or Vickery Enterprises, Inc., including but not limited to advertising, offering, or providing any goods or services as any such businesses or under any such business names; and

d. maintaining a website or any social media presence for Vickery-Young & Associates LLC, Vickery-Young & Associates, or Vickery Enterprises, Inc.

14. Defendants will comply with all requirements of the Kentucky Consumer Protection Act, including but not limited to the requirements in KRS 367.46961 regarding contracts made as a result of a telephone solicitation, KRS 367.46955(3) regarding the receipt of advance fees to assist consumers in recovering money or other items lost by a consumer in a prior telephone solicitation transaction; and KRS 367.46955(15) regarding unsolicited calls to residential phone numbers on the national Do Not Call Registry maintained by the U.S. Federal Trade Commission.

15. VYA shall dissolve and cease to do business by the Effective Date. Defendants shall provide proof of the dissolution of these companies within thirty (30) days of the Effective Date by delivering to lead counsel for Plaintiff a certified copy of articles of dissolution for Vickery-Young & Associates, LLC and Vickery Enterprises, Inc., which were filed with the Kentucky Secretary of State, or equivalent filed declarations recognized by Kentucky law.

16. VYA will remove its website and any social media presence within ten (10) days of the Effective Date of the Consent Judgment.

17. Defendants, jointly and severally, also agree to pay the sum of sixty-one thousand dollars (\$61,000.00) as follows: \$25,000 upon the signing of the agreement, and the remainder by December 31, 2019. These payments shall be made to Defendants' Counsel to be held in a client trust account until paid in full consistent with the requirements of this Consent Judgment and the Orders in the cases filed by the Attorneys General of Tennessee and Texas. Once the total amount has been received by Defendants' Counsel, Defendants' Counsel will, by January 17, 2020, pay to the Kentucky Office of the Attorney General as follows:

- a. \$3,500 which the Attorney General shall pay to Eugene and Betty Doolin as restitution pursuant to KRS 367.200; and

b. \$12,919.96 for the Attorney General's reasonable investigation and litigation costs pursuant to KRS 48.005(3).

The remaining funds shall be disbursed in accordance with the requirements in the Tennessee and Texas cases referenced above.

18. Defendants, jointly and severally, also agree to pay to the Commonwealth of Kentucky the sum of \$25,000 as a civil penalty pursuant to KRS 367.990(2) and additional costs of investigation of \$50,000 (the "Suspended Payment"). These amounts shall be suspended for a period of six (6) years from the effective date of this judgment. The Commonwealth's agreement to the suspension of payment for this time period is expressly premised and conditioned upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements submitted to the Commonwealth of Kentucky (collectively "financial representations"), namely the Financial Statement of Vickery-Young & Associates signed September 14, 2018, the Financial Statement of Jamie W. and Amber Vickery signed September 14, 2018, and the Financial Statement of Thomas Christopher and Stephanie Renee Young signed January 28, 2019.

19. The full unpaid balance of the amounts awarded in Paragraph 25 of this Judgment against Defendants shall be immediately due and owing upon issuance by the Court, within six (6) years of the Effective Date of this Judgment, of an order: (a) finding any Defendant to be in contempt for violating one or more of the injunctive terms described in Paragraph 20 through 24 herein or any of its subparagraphs; or (b) finding that any Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in any of the financial representations described in Paragraph 25 of this Judgment. If any such order is issued by the Court within six (6) years of the Effective Date of this Judgment, the Commonwealth may take any lawful action it deems appropriate in aid of collection of the

amounts awarded in Paragraph 25, including post-judgment interest on such amounts, without any further order or action by the Court. If no such order is issued by the Court within six (6) years, then the Defendants shall not be required to pay the Suspended Payment. Any amounts received or collected by the Commonwealth shall be allocated as civil penalties under KRS 367.990(2) and the remainder as investigative and litigation costs pursuant to KRS 48.005(3).

20. The acceptance of this Consent Judgment by the Attorney General shall not be deemed approval by the Attorney General of any of Defendants' business practices. Further, neither Defendants nor anyone acting on its behalf shall state or imply that the Attorney General has approved, condoned, or sanctioned any portion or aspect of Defendants' business operations.

21. If the Attorney General believes that Defendants have violated any obligation under this Consent Judgment, the Attorney General shall, prior to initiating any court proceeding, notify Defendants in writing of any alleged violation of the Consent Judgment and request that Defendants take action to correct the alleged violation. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of Kentucky consumers, Defendants shall have twenty (20) business days from the date of receipt of such written notice to respond to the Attorney General in writing by denying that a violation has occurred or accepting (without necessarily admitting) the allegation of violation and proposing steps that Defendants will take to address the violation. If Defendants fail to respond within twenty (20) business days or deny that a violation has occurred, the Attorney General may seek appropriate legal remedy.

22. By entering into this Consent Judgment and paying the amount set forth herein, Defendants do not admit any liability, fault, or wrongdoing.

23. Nothing in this Consent Judgment shall be construed to affect or deprive any right of action that any consumer, person, or entity may have, or any right of action that any local, state, federal, or other governmental entity may hold, against Defendants except as otherwise provided by law.

GENERAL PROVISIONS

24. This Court retains jurisdiction to enforce this Judgment.

25. This Consent Judgment applies to all of Defendants' locations within or serving residents of the Commonwealth of Kentucky.

26. The individuals signing this Consent Judgment on behalf of Defendants state that they are under no disability, have read and knowingly consent and agree to this Consent Judgment, and have authority to sign and enter into this Consent Judgment on behalf of all Defendants.

27. This Consent Judgment applies to Defendants and to its principals, officers, agents and directors, assigns and successors, and managerial or supervisory employees in their official capacities. Defendants agree to notify its agents, employees, representatives, successors, parent companies, subsidiaries, and assigns of the execution of this Consent Judgment and inform them regarding the requirements thereof.

28. This Consent Judgment is governed by the laws of the Commonwealth of Kentucky, and the Attorney General and Defendants agree that this Consent Judgment is subject to court approval. The parties hereby agree to seek court approval of this Consent Judgment.

29. Defendants represent and warrant that they are represented by legal counsel and have been fully advised of their legal rights in this matter.

30. This Consent Judgment contains the entire agreement between Defendants and the Attorney General and there are no representations, agreements, arrangements, or understandings,

oral or written, between the parties relating to the subject matter of this Consent Judgment, which are not fully expressed herein. Only the Commonwealth, Defendants, and this Court may enforce this Consent Judgment.

31. The titles and headers to each section of this Consent Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual terms of this Consent Judgment.

32. Nothing in this Consent Judgment shall limit the Plaintiff's right to obtain information, records, or testimony from Defendants for the purpose of determining compliance with this Consent Judgment. Defendants agrees to execute and deliver all documents and instruments, which are necessary to carry out the terms of this Consent Judgment.

33. If any clause, provision, or section of this Consent Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Consent Judgment, and this Consent Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or provision had not been contained herein.

34. Nothing in this Consent Judgment shall be construed as relieving Defendants of their obligation to comply with all state and federal laws and regulations, and no term of this Consent Judgment shall be deemed to grant Defendants permission to engage in any acts or practices prohibited by such laws and regulations.

35. Any failure by a party to this Consent Judgment to insist upon performance by any other party of any of the provisions of this Consent Judgment shall not be deemed a waiver of any of the provisions of this Consent Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any provisions of this Consent

Judgment and the imposition of any applicable sanctions and penalties, including but not limited to, contempt, civil penalties, and payment of costs and attorney fees.

36. Time shall be of the essence with respect to each provision of this Consent Judgment that requires action to be taken by a party within a stated time period or upon a specified date. This Consent Judgment shall be binding and effective as of the date of its entry by the Clerk.

37. This Consent judgment is for settlement purposes only. No part of this Consent Judgment constitutes or shall be deemed to constitute an admission by Defendants that they have ever engaged in any conduct alleged or proscribed by this Consent Judgment, nor shall this Consent Judgment constitute evidence against Defendants in any action brought by any person or entity for any violation of any federal or state statute or regulation or the common law, except in an action brought by the Attorney General to enforce the terms of this Consent Judgment.

38. Defendants acknowledge that they understand that the Commonwealth of Kentucky and this Court expressly rely upon all representations and warranties in this Judgment and that, if any one or more is false, unfair, deceptive, misleading, incomplete, or inaccurate in any manner, the State, if it elects to do so, has the right to vacate or set aside this Judgment, in whole or in part, and to move that the individual(s) or entity making such false, unfair, deceptive, misleading, or inaccurate representation(s) or warranty(ies) be held in contempt, that all monetary amounts under this Judgment become immediately due and payable, and that sanctions and remedies be imposed under other applicable laws.

39. Defendants, individually and collectively, agree that the duties, responsibilities, burdens, and obligations undertaken in connection with this Judgment shall apply to all Defendants. This Judgment shall bind Defendants and shall be binding on any and all future purchasers, merged parties, inheritors, or other successors in interest.

40. Defendants consent to the jurisdiction and venue of the Court, waive service of process, and any notice for the filing, approval, and entry of this Consent Judgment.

ORDER AND JUDGMENT

The Court, having been well and sufficiently advised in the parties' agreement and having determined that it has jurisdiction and venue over this matter pursuant to KRS 367.190,

IT IS HEREBY ORDERED AND ADJUDGED that the Consent Judgment is entered of record; and this is a final judgment and there is no just reason for delay.

Date: 10/31/19

John R. Furi, JUDGE
WARREN CIRCUIT COURT
DIVISION 2

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

ANDY BESHEAR
KENTUCKY ATTORNEY GENERAL

By: Leah Cooper Boggs
Leah Cooper Boggs
Assistant Attorney General
Todd E. Leatherman
Special Attorney
Office of Consumer Protection
Frankfort, Kentucky 40601
Counsel for Plaintiff

Date: 10/30/19

FOR DEFENDANTS

By: Michael Denbow
Michael Denbow
Jeffrey S. Moad
Stites & Harbinson PLLC
400 West Market Street
Suite 1800
Louisville, KY 40202-3352
Counsel for Defendants

Date: 8/30/19

10-31-19
Boggs

JAMIE VICKERY

Jamie Vickery 8-26-19
Date

AMBER VICKERY

Amber Jo Vickery 8/26/19
Date

VICKERY ENTERPRISES, INC.

Jamie Vickery 8/26/19
By: _____ Date
Title: CEO

VICKERY- YOUNG & ASSOCIATES, LLC

Stephanie Young 8/26/19
By: _____ Date
Title: CO-OWNER

STEPHANIE YOUNG

Stephanie Young 8/26/19
Date

THOMAS YOUNG

Thomas Young 26 Aug 2019
Date

CLERK'S CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Consent Judgment was mailed, first-class mail, postage prepaid, on this 31st day of October, 2019 to:

✓ Leach Cooper Boggs
Todd E. Leatherman
Consumer Protection Division
Office of the Attorney General
Suite 200
1024 Capital Center Drive
Frankfort, KY 40601

Michael Denbow
Jeffrey S. Moad
Stites & Harbinson PLLC
400 West Market Street
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Louisville, KY 40202-3352



Clerk/Deputy Clerk, Warren Circuit Court